

Express Mail No. EV 233502734 US

REMARKS

Claims 62-97 are currently pending and under consideration. Claim 62 was amended to address matters of form. Formal amendments are made to (i) correct the spelling of "nitrogen" in the definition of Y^0 and (ii) amend the definition of Q to adopt more formal nomenclature as more fully discussed below.

In claim 62, as amended herein, the definition of Q was refined to further clarify that the substituents thereof (*i.e.*, R^9 - R^{13}) may be present when Q represents a 5- or 6-membered aryl or heteroaryl. These substitutions are present on ring carbon atoms (since ring heteroatoms of a heteroaryl ring can't be substituted). Support for the amendment to Q can be found in the claims as originally presented and the specification. As originally presented, claim 2, for example, included the following phrases in the definition of Q: "...the other carbon adjacent to the carbon at the point of attachment...", "a carbon adjacent to R^9 and two atoms from the carbon at the point of attachment...", and "a carbon adjacent to R^{13} and two atoms from the point of attachment..." Further support for the refinement of Q can be found in the specification at page 12, lines 1-12 wherein Q is formula (II). It should be noted that the ring atoms of Q recited in formula II (D^1 , D^2 , J^1 , J^2 , and K^1) are "selected to maintain an aromatic ring system" and the ring substituents (R^9 - R^{13}) are "each independently selected to maintain the tetravalent nature of carbon, trivalent nature of nitrogen, the divalent nature of sulfur, and the divalent nature of oxygen."¹ In order to fulfill these requirements, no substitution at a heteroatom is allowable. This amendment does not alter the scope of the claim, but adopts more formal nomenclature to specify, by ring position, the substituent which may be present when the ring position is occupied by a carbon (since the heteroatoms of heteroaryls are not substituted), thereby obviating any conceivable misinterpretation.

Reconsideration is requested of the provisional rejection of claims 62-97 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 17-24 and 41-44 of copending application no. 09/574,740. The provisional double patenting rejection is the sole grounds of rejection for the pending application. According to the MPEP, "[i]f the 'provisional' double patenting rejection in one application is the only rejection remaining in that application, the examiner should withdraw that rejection and permit the application to issue as a patent, thereby converting the 'provisional' double patenting rejection in the other application(s)

¹Specification at p. 12, lines 9-12.

Express Mail No. **EV 233502734 US**

into a double patenting rejection at the time the one application issues as a patent." MPEP §804(I)(B). Thus, the present application should be allowed to issue as a patent and the provisional double patenting rejection in copending application no. 09/574,740 converted into a double patenting rejection. In the alternative, once copending application no. 09/574,740 has issued as a patent, the provisional double patenting rejection in the present application can be converted into a double patenting rejection. In either scenario, applicants will address the double patenting issue when it is no longer provisional in nature.

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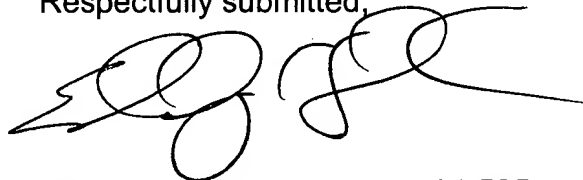
CONCLUSION

In light of the foregoing, applicants request entry of the claim amendments, withdrawal of the rejection and solicit an allowance of the claims. The Examiner is invited to contact the undersigned attorney should any issue remain unresolved.

* Enclosed is applicants' check in the amount for \$410 in payment of the surcharge, filing fee and two month extension of time.

The Commissioner is hereby authorized to charge any underpayment and credit any overpayment of government fees to Deposit Account No. 19-1345.

Respectfully submitted,



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